

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RED 1 INVESTMENTS, INC.,
Plaintiff,

v.

AMPHION INTERNATIONAL LTD.,
AMPHION INTERNATIONAL INC.,
Defendants.

NO. CV-06-279-LRS

**ORDER RE VIOLATION OF
PERMANENT INJUNCTION AND
DENYING BROWN'S MOTION TO
DISMISS**

I. BACKGROUND

On August 20, 2005, Red 1 Investments, Inc. ("Red 1") filed a UCC Financing Statement on a security interest in all accounts, interest, collateral and intellectual property of Amphion International Limited ("Amphion") which secures a debt obligation associated with the sale of certain water disinfection and other technologies. Ct. Rec. 1, Compl., Ex. F. Red 1's financing statement was filed in the Muscogee County Clerk's Office in the state of Georgia. Currently, the security interest of Red 1 has not been satisfied as of today's date.

The present action was filed in this court on September 26, 2006 after Amphion defaulted on its obligations to Red 1. Ct. Rec. 1. On February 28, 2007, the court entered a Default Judgment in favor of Red

1 1. Ct. Rec. 35. On that same date, the court issued an Order for
2 Permanent Injunction which restrained "[Amphion], [its] agents,
3 employees, and all other persons, firms, or corporations acting or
4 claiming to act in [Amphion's] behalf, or in concert or participation
5 with [Amphion], and any other individual or entity duly served with a
6 copy of this order." Ct. Rec. 36, Permanent Inj., ¶2. The Judgment and
7 Order were registered in the United States District Court for the
8 Southern District of Georgia on April 9, 2007. Ct. Rec. 44, Delaney
9 Decl., at 5. Red 1 ascertained that Vickie Brown and/or Coastal
10 Logistics, Inc. ("Coastal") were in possession of property subject to Red
11 1's security interest. In April 2007, Red 1 effected service of the
12 Permanent injunction by hand delivery to Ms. Brown and Coastal. Id. at
13 3. Despite several requests by Red 1, Ms. Brown refuses to turn over the
14 property subject to Red 1's security interest. Ct. Rec. 44, Delaney
15 Decl., at 4, ¶10.

16 On June 8, 2007, after learning of the Court's Default Judgment and
17 Permanent Injunction, Ms. Brown filed a Petition for Declaratory Judgment
18 and injunctive Relief in Superior Court of Chatham County, State of
19 Georgia. In that petition, Ms. Brown asks the Georgia Superior Court to
20 "temporarily enjoin and restrain any further proceedings" related to Red
21 1's Default Judgment and Permanent Injunction. Ct. Rec. 52, at 30, ¶9.
22 Red 1 is "aggressively defending this action in large part on the basis
23 that issues related to Red 1's interest in the collateral must be
24 adjudicated here in the Eastern District of Washington." Ct. Rec. 55,
25 at 3.

1 On or about August 17, Red 1 moved this court for the issuance of
2 a Contempt Order, Ct. Recs. 41, 45, supported by the declarations of
3 Howard Delaney and Donald Condon. Ct. Recs. 43-44. On August 28, 2007
4 this court ordered Vickie Brown to show cause in writing why she should
5 not be found in contempt of court for violating the Permanent Injunction
6 entered on February 28, 2007, Ct. Rec. 37, for her refusal to turn over
7 collateral to which Red 1 Investments has a security interest. Red 1
8 requested that Vickie Brown be enjoined and stayed from selling any
9 collateral in which Red 1 Investments has advised Vickie Brown of its
10 security interest in the same and applicability of the Permanent
11 Injunction.

12 On August 30, 2007, as reflected by the Affidavit of Service filed
13 with the court, Ms. Brown was served with a copy of the show cause order
14 and related pleadings. Ct. Rec. 48. On September 28, 2007, Ms. Brown
15 filed, in response to the Show Cause Order, "Vickie Brown's Motion to
16 Dismiss for Lack of Personal Jurisdiction and for an Award of Attorneys'
17 Fees," Ct. Rec. 49. The issue squarely before this court is whether the
18 court that orders a Permanent Injunction may exercise jurisdiction over
19 a nonparty, Georgia resident that allegedly knowingly aided and abetted
20 a violation of the Permanent Injunction.

21 **II. ANALYSIS**

22 Before the court can reach the question of whether Ms. Brown
23 actually disobeyed the order, two jurisdictional questions must be
24 resolved. The first question is whether this court has personal
25 jurisdiction over Ms. Brown. The second question is whether this court
26 has subject matter jurisdiction to proceed against her.

1 **A. Preliminary Jurisdiction**

2 At the outset of the analysis, this court must first determine if
3 it has jurisdiction over Vickie Brown. Initially, the court asserts
4 jurisdiction to determine whether it has personal jurisdiction over Ms.
5 Brown, a nonparty outside the territorial jurisdiction of the Eastern
6 District of Washington, in order to properly hold that she is or is not
7 in contempt. The power of the court to exercise this preliminary
8 jurisdiction is well settled, and Ms. Brown does not dispute that the
9 court has such authority. See *United States v. United Mine Workers*, 330
10 U.S. 258, 293, 67 S.Ct. 667, 695-96, 91 L.Ed. 884 (1947); *Familia de Boom*
11 *v. Arosa Mercantil, S.A.*, 629 F.2d 1134, 1137 (5th Cir.1980); *Atlantic*
12 *Las Olas, Inc. v. Joyner*, 466 F.2d 496, 498 (5th Cir.1972); 13 Wright,
13 Miller & Cooper, Federal Practice and Procedure, Jurisdiction 2d, § 3536
14 (1984).

15 Non-parties may be held in civil contempt of a court ordered
16 injunction on the grounds that they are either: (1) successors in
17 interest to parties bound by the order or (2) aiders and abettors to a
18 violation of the order by a party thereto. See generally *Regal Knitwear*
19 *Co. v. NLRB*, 324 U.S. 9, 14, 65 S.Ct. 478, 89 L.Ed. 661 (1945). This
20 common law principle is codified in Rule 65 of the Federal Rules of Civil
21 Procedure which provides that orders are binding upon parties to the
22 order and their "officers, agents, servants, employees, and attorneys,
23 and upon those persons in active concert or participation with them who
24 receive actual notice of the order by personal service or otherwise."
25 Fed.R.Civ.P. 65(d). The party seeking to enforce the terms of an
26 injunction against a non-party bears the burden of showing that the

1 person sought to be enjoined is properly within the scope of the
2 injunction. *People v. Operation Rescue National*, 80 F.3d 64, 70 (2d
3 Cir.1996).

4 It has long been held, at least in the Second Circuit, that one who,
5 with actual notice of the order, "knowingly assists a defendant in
6 violating an injunction subjects himself to civil ... proceedings for
7 contempt." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir.1930).
8 For such entities to be held in contempt they must aid and abet the party
9 named in the order" *Id.* at 832; *Paramount Pictures Corp. v. Carol*
10 *Publishing Group, Inc.*, 25 F.Supp.2d 372, 374 (S.D.N.Y.1998), *aff'd.*
11 *mem.*, 181 F.3d 83, 1999 WL 319328 (2d Cir.1999). Thus, a non-party who
12 is alleged to have acted in concert to aid and abet a violation of an
13 injunction can be held in contempt only upon the "predicate" finding that
14 the enjoined party has violated the order. *Levin v. Tiber Holding Corp.*,
15 277 F.3d 243, 250 (2nd Cir. 2002). Contempt will not lie against one who
16 "acts independently and whose rights have not been adjudicated."
17 *Paramount Pictures Corp.*, 25 F.Supp.2d at 374, quoting, *Heyman v. Kline*,
18 444 F.2d 65, 65-66 (2d Cir.1971).

19 The Fifth Circuit held in *Waffenschmidt v. MacKay*, 763 F.2d 711, 716
20 (5th Cir. 1985), *cert. denied*, 474 U.S. 1056, 106 S.Ct. 794, 88 L.Ed.2d
21 771 (1986) that nonparties who reside outside the territorial jurisdiction
22 of a district court may be subject to that court's jurisdiction if, with
23 actual notice of the court's order, they actively aid and abet a party in
24 violating that order. The *Waffenschmidt* court opined this is so despite
25 the absence of other contacts with the forum. In *Waffenschmidt*, the
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1 resident defendant had defrauded the plaintiffs in connection with the
2 sale of securities. The resident defendant then passed the ill-gotten
3 gains on to nonresident defendants, who proceeded to "dissipate" the
4 money. When ordered to show cause why they should not be held in
5 contempt, the nonresident defendants (who had never been parties to the
6 action and who had not been named in the injunction) defended on the
7 ground that there was no personal jurisdiction. The court held that the
8 nonresident, nonparty defendants were "subject to the court's jurisdiction
9 as persons enjoined by the court's order." *Id.* at 715. The Fifth Circuit
10 affirmed:

11 When [respondents] knowingly participated in
12 [defendant's] scheme to dissipate the funds they
13 equally knowingly subjected themselves to the
14 jurisdiction of that court.

15 *Id.* at 717.

16 Ten years later, in *Reebok Intern. Ltd. v. McLaughlin*, 49 F.3d 1387
17 (9th Cir. 1995), it appears the Ninth Circuit, which this court is bound
18 to follow, expressed its approval of the Fifth Circuit's finding of
19 "super-contact" by the *Waffenschmidt* court:

20 In finding this "super-contact," the district court
21 relied on the Fifth Circuit's decision in
22 *Waffenschmidt v. MacKay*, 763 F.2d 711, 714 (5th
23 Cir.1985), cert. denied, 474 U.S. 1056, 106 S.Ct.
24 794, 88 L.Ed.2d 771 (1986). In that case, the Fifth
25 Circuit found that "[n]onparties who reside outside
26 the territorial jurisdiction of a district court may
 be subject to that court's jurisdiction if, with
 actual notice of the court's order, they actively aid
 and abet a party in violating that order." *Id.* The
 Fifth Circuit based its decision on both the inherent
 authority of a court to enforce its injunctions and
 the idea that a knowing violation of an injunction
 would make litigation in the forum that issued it
 foreseeable, and therefore within the notions of fair
 play and substantial justice. See *id.* at 716-18,

721-23; Fed.R.Civ.P. 65(d). Although *Waffenschmidt* speaks in expansive terms, it was speaking about the authority of district courts within the United States. The court grounded its decision on the simple fact that the "mandate of an injunction issued by a federal district court runs nationwide...." *Id.* at 716. That being so, the court could hold enjoined parties in contempt, no matter in what state they violated the court's orders. *Id.* As the court went on to say: "The nationwide scope of an injunction carries with it the concomitant power of the court to reach out to nonparties who knowingly violate its orders." *Id.* at 717. Once the court accepted that proposition, it is not surprising that it determined that a national court which could issue nationwide orders could also reach out and enforce those orders on a nationwide basis by taking personal jurisdiction over violators. Of course, in *Waffenschmidt* the individuals held in contempt had accepted assets from the enjoined party after they knew that he was enjoined from transferring those assets. *Id.* at 723. A finding of personal jurisdiction over the violators in that instance may be sound, even necessary. But the strength of the analysis begins to crumble when a district court seeks to reach out across the Atlantic in an attempt to impose conflicting duties on another country's nationals within its own borders.

Reebok, 49 F.3d at 1391-92.

The next part of the court's analysis will examine the facts to determine if Vickie Brown was 1) subject to jurisdiction under the traditional "minimum contacts" analysis; and/or 2) knowingly violated the Permanent Injunction by active concert or participation with those directly enjoined. As *Waffenschmidt* suggests and the Plaintiff argues, it is the common law power to enforce its own injunction which district courts inherently possess coupled with the knowing, voluntary acts of Ms. Brown that form the basis for the court's proper exertion of personal jurisdiction over her in this contempt proceeding. Citing *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62

1 L.Ed.2d 490 (1980) *Waffenschmidt* specifically instructs that "[h]aling a
2 person into court only upon finding that the nonparty has aided in
3 knowingly violating an injunction fulfills traditional notions of fair
4 play and substantial justice because it is foreseeable that the person
5 would be required to respond in that forum." *Waffenschmidt*, 763 F.2d at
6 721.

7 Ms. Brown, on the other hand, vigorously argues that the assertion
8 of jurisdiction over her violates minimum due process requirements as
9 established by *International Shoe* and its progeny. Ct. Rec. 58 at 14.
10 Plaintiff counters that by finding a nonparty has aided a party in
11 knowingly violating an injunction, due process is satisfied. Ct. Rec. 55
12 at 9. In other words, Plaintiff seeks to hold Ms. Brown responsible for
13 the intended consequences which her purposeful nonforum activities had on
14 the subject matter of the court's order. Plaintiff implies that Ms. Brown
15 cannot complain that it was unforeseeable or unreasonable for her to be
16 haled before the court. Id. at 10.

17 B. Vickie Brown's Knowledge

18 The court has considered all of the declarations, including the
19 "Plaintiff's Supplemental Opposition to Vickie Brown's Motion to
20 Dismiss,"¹ which was filed on October 17, 2007.
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23 ¹Ms. Brown objects to the supplemental brief and accompanying
24 Stoneberger declaration due to its "untimeliness." Ct. Rec. 58 at 4.
25 However, Ms. Brown has filed a responsive declaration to Plaintiff's
26 supplement, , Ct. Rec. 59, which the court will equally consider.

1 Ms. Brown asserts that she essentially stumbled upon the Collateral
2 (some of Amphion's equipment) by mistake at a storage facility in
3 Savannah, Georgia known as Coastal Logistics near the end of October²
4 2006. Ct. Rec. 52, Brown Decl., ¶¶ 14-16. Evidence indicates that Ms.
5 Brown attended an emergency shareholders meeting in March 2006 in which
6 it was discussed that Amphion assets were being held in storage and needed
7 to be retrieved. Possible locations were discussed, including the storage
8 unit in Savannah, Georgia. Condon Decl., ¶¶ 7-9.

9 Ms. Brown asserts that she paid for the Collateral with her own
10 funds. Ct. Rec. 52, Brown Decl., ¶ 17. Plaintiff points out that Ms.
11 Brown does not disclose to the court how much she paid, when the payment
12 was issued, or to whom she paid. Ct. Rec. 55. At 4. Without such
13 evidence, it is difficult to prove she is a "bona fide" purchaser of the
14 Collateral.

15 On April 4, 2004, Red 1 filed a UCC-1 Financing Statement that put
16 the state of Georgia on notice of its superior interest in the Collateral.
17 Ct. Rec. 1, Compl., Ex. F. Ms. Brown claims that she did not know Red 1
18 had a security interest in the Collateral until April 18, 2007. Ct. Rec.
19 52, Brown Decl., ¶ 18. Contrary evidence indicates, however, that Ms.
20 Brown should have been aware of Red 1's claim in the Collateral and that
21 Red 1 had filed a UCC-1 Financing Statement security interest as early as
22 September 4, 2006 when Amphion (AII) Board Chair Darryl Wagner sent an e-
23

24 ²In another declaration of Ms. Brown filed on October 24, 2007, she
25 states that her purchase of the Collateral was made in November of 2006.
26 Ct. Rec. 59, ¶3.

1 mail to AII Board members, shareholders, and investors advising them of
2 a UCC filing on April 4, 2004 by Red 1 on Amphion (AII and AIL).
3 Stoneberger Decl., Ex. A at 6. Ms. Brown was a recipient of this e-mail
4 notice. Id. at 5. At the latest, though, according to Ms. Brown's April
5 5, 2007 e-mail to Dr. Condon, she had talked to her attorney and was aware
6 of Red 1's interest in the collateral. Ct. Rec. 43, at 28. In any event,
7 the evidence indicates that Ms. Brown was aware of Red 1's security
8 interest prior to April 18, 2007, the date she claims to have learned of
9 the security interest.

10 Ms. Brown replies in her latest declaration of October 24, 2007 that
11 although she read most of the e-mails, she did not even know what a "UCC"
12 was. Ct. Rec. 59, ¶3. Ms. Brown further states that despite the e-mail
13 sent to her on September 4, 2006, she did not have an understanding that
14 Red 1 claimed to have a security interest in the equipment which she
15 purchased from Coastal until Red 1 informed her of that claim in April
16 2007. Id. Ms. Brown further declares that she thought the equipment she
17 purchased was simply "abandoned." Id. Yet in Ms. Brown's e-mail to Dr.
18 Donald Condon she states that "I've done my due diligence. I made sure
19 when I purchased the equipment I was within my full legal rights to do
20 so." Ct. Rec. 43, at 9. Plaintiff argues and the court agrees, that had
21 Ms. Brown done her "due diligence" she surely would have uncovered Red 1's
22 UCC Filing Statement.

23 C. Aiding/Abetting

24 Ms. Brown claims that she did not purchase the Collateral for Amphion
25 or their investors. However, based on the e-mails with Dr. Condon in
26 January and March 2007, one could conclude that she was advancing the

1 interests of all shareholders. Ct. Rec. 52, Brown Decl., ¶ 18; Ct. Rec.
2 43, at 6-7, 13. Plaintiff argues that although Ms. Brown portrays an
3 image to the court of someone who was not active with Amphion during the
4 time Red 1 was attempting to seize the Collateral, the various e-mails
5 demonstrate that Ms. Brown was part of the decision-making group who was
6 updated on Amphion's interests and frequently gave her opinions on a
7 course of action. Ct. Rec. 57, at 3. For example, On September 4, 2006,
8 AII Board Chair Darryl Wagner recommends that Vickie Brown or Brett
9 Stoneberger send out an update to Amphions investors in "regards to action
10 and our plan to contact Delaney [Red 1]." Stoneberger Decl., Ex. A at 6.
11 On that same day, September 4, 2006, Ms. Brown sent an e-mail in response
12 to the Wagner e-mail giving her advice and opinion on sending out an
13 update to the AII investors. Id. at 5. Further, on November 26, 2006,
14 after the date Ms. Brown allegedly purchased the Collateral from Coastal,
15 Vickie Brown sent an e-mail to AII demonstrating her active involvement
16 in AII and in finding the Collateral in which Red 1 has an interest.
17 Specifically Ms. Brown stated:

18 If Red One (Howard Delaney) has foreclosed on the
19 company what does Limited or Inc now have? . . . When
20 Howard seized the equipment was he able to seize all
21 of the equipment and units? Were all the units in
22 tact? Did John Gill hide part of the equipment or
23 was everything turned over to Red One?

24 Id. At Ex. C at 12.

25 The evidence shows the Ms. Brown was actively involved with Amphion while
26 Red 1 was attempting to legally account for its security interest.

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1 D. Minimum Contacts Analysis

2 The starting point in any determination of personal jurisdiction, of
3 course, is the "minimum contacts" analysis first enunciated in
4 *International Shoe Co. V. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945).
5 The Ninth Circuit has broken down the "minimum contacts" analysis into
6 three requirements that must be met before a nonresident defendant can be
7 subjected to an exercise of jurisdiction. *Data Disc, Inc. v. Systems*
8 *Technology Associates, Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977). The
9 first requirement is that the defendant has done some act or consummated
10 some transaction with the forum or performed some act by which he
11 purposefully avails himself of the privilege of conducting activities in
12 the forum, thereby invoking the benefits and protections of its laws. The
13 second requirement is that the claim must be one which arises out of or
14 results from the defendant's forum-related activities. The third
15 requirement is that the exercise of jurisdiction be reasonable.

16 Ms. Brown argues that she resides in Effingham County, Georgia; has
17 never traveled to the State of Washington; has never transacted business
18 in the State of Washington; and has no contacts whatsoever with the State
19 of Washington. Brown Decl. Ms. Brown further notes that she owns no
20 property and has never transacted business with Red 1. Id. Plaintiff
21 argues that Ms. Brown meets this "minimum contacts" requirement based on
22 the fact that in Ms. Brown's case, she has aided a party in knowingly
23 violating an injunction which satisfies due process. Plaintiff asserts
24 that Ms. Brown, a nonparty and nonresident, is responsible for the
25 intended consequences which her purposeful nonforum activities had on the
26 subject matter of the court's order. Thus, Ms. Brown is arguably subject

1 to personal jurisdiction under the "minimum contacts" analysis, although
2 Plaintiff's alternative theory is a stronger argument.

3 E. Alternative Finding of Personal Jurisdiction

4 Plaintiff also argues that Ms. Brown is subject to personal
5 jurisdiction under the language of Federal Rule of Civil Procedure of
6 Civil Procedure Rules 5 and 71, and the injunction in this case.
7 Specifically, Plaintiff Red 1 argues that because Ms. Brown "acted in
8 concert" and "participated" with Defendant Amphion in disobeying this
9 court's orders, she submitted herself to the court's jurisdiction.

10 Ms. Brown, on the other hand, argues that this court does not have
11 personal jurisdiction over her, and even if it did, she has not violated
12 this court's Permanent Injunction. Ct. Rec. 51 at 2. Ms. Brown asserts
13 that in addition to lack of personal jurisdiction, service was improper
14 pursuant to FRCP 4.1 or any other applicable statute or civil rule.

15 Plaintiff argues that service was proper and Ms. Brown's reading of
16 Rule 4.1 is too restrictive. Plaintiff supports its argument by
17 explaining that the court in *Waffenschmidt* specifically found an argument
18 similar to Ms. Brown's improper service argument regarding Rule 4.1 as far
19 too restrictive. The Fifth Circuit noted in its jurisdictional analysis:

20 Courts do not sit for the idle ceremony of making
21 orders and pronouncing judgments, the enforcement of
22 which may be flouted, obstructed, and violated with
23 impunity, with no power in the tribunal to punish the
24 offender. [Federal] courts, equally with those of the
25 state, are possessed of ample power to protect the
26 administration of justice from being thus hampered or
interfered with.

24 *Waffenschmidt*, 763 F.2d at 716.

25 The *Waffenschmidt* court also noted that enforcement of an injunction
26 through a contempt action must occur in the issuing jurisdiction because

1 contempt is an affront to the court issuing the order. Id. (citation
2 omitted). Plaintiff concludes that FRCP Rule 71 gives the District Court
3 the power to enforce orders against "a person who is not a party . . . As
4 if a party." Fed. R. Civ. P. 71. Citing *Irwin v. Mascott*, 370 F.3d 924,
5 931 (9th Cir. 2004), Plaintiff argues that Rule 71 permits a district
6 court to use 'the same processes for enforcing obedience to the order as
7 if [he were] a party,' such as holding him in contempt for violating it."
8 By using the processes found in FRCP Rule 5, Plaintiff states that Ms.
9 Brown has been properly served. The court agrees with Plaintiff and finds
10 it unnecessary to address Ms. Brown's long-arm statute argument.

11 Where a defendant challenges the sufficiency of personal
12 jurisdiction, the plaintiff must bear the burden of establishing that the
13 court does have jurisdiction. *Cubbage v. Merchant*, 744 F.2d 665, 667 (9th
14 Cir.1984).

15 This step in the analysis necessarily requires the court to determine
16 if Ms. Brown is one that is bound by the injunction. The court finds
17 wisdom from a district court decision in *Lynch v. Rank*, 639 F.Supp. 69
18 (N.D.Cal. 1985) which wrote:

19 The seminal pronouncements regarding who may be bound
20 by an injunction can be found in *Alemite*
21 *Manufacturing Corp. v. Staff*, 42 F.2d 832 (2d
22 Cir.1930), and in *Regal Knitwear Co. v. NLRB*, 324
U.S. 9, 65 S.Ct. 478, 89 L.Ed. 661 (1945). In
Alemite, Judge Learned Hand stated the general rule
on the scope of injunctions:

23 [N]o court can make a decree which will bind any one
24 but a party; a court of equity is as much so limited
25 as a court of law; it cannot lawfully enjoin the
26 world at large, no matter how broadly it words its
decree. If it assumes to do so, the decree is pro
tanto brutum fulmen, and the persons enjoined are
free to ignore it. 42 F.2d at 832. In order to be
subject to the contempt power, Putnam "must either

1 abet the defendant, or must be legally identified
2 with him." Id. at 833. Although Judge Hand wrote his
3 *Alemite* opinion before the adoption of Rule 65(d),
4 the pronouncements therein continue to be regarded as
5 the classic statement of limitations on a court's
equitable powers. Similarly, Justice Jackson's
oft-cited opinion for the Court in *Regal Knitwear*
emphasizes the limits on the permissible scope of an
injunction:

6 The courts * * * may not grant an enforcement order
7 or injunction so broad as to make punishable the
8 conduct of persons who act independently and whose
rights have not been adjudged according to law.

9 *Lynch*, 639 F.Supp. 69 at 72.

10 Although Plaintiff does not include FRCP Rule 65(d) in its analysis,
11 the court finds this rule telling, especially in light of the recent
12 amendment³ in 2007 to this rule. Rule 65(d) reads:

13 (d) Form and Scope of Injunction or Restraining
14 Order. Every order granting an injunction and every
15 restraining order shall set forth the reasons for its
issuance; shall be specific in terms; shall describe

16 ³The language in rule 65 was recently amended this year. Rule
17 65(d)(2) clarifies two ambiguities in former Rule 65(d). The former rule
18 was adapted from former 28 U.S.C. § 363, but omitted a comma that made
19 clear the common doctrine that a party must have actual notice of an
20 injunction in order to be bound by it. Amended Rule 65(d) restores the
21 meaning of the earlier statute, and **also makes clear the proposition that**
22 **an injunction can be enforced against a person who acts in concert with**
23 **a party's officer, agent, servant, employee, or attorney.** [Our emphasis
24 added]. See 2007 Revised Edition Federal Civil Judicial Procedure and
25 Rules, "2007 Amendments," at pp. 316-17.
26

1 in reasonable detail, and not by reference to the
2 complaint or other document, the act or acts sought
3 to be restrained; and is binding only upon the
4 parties to the action, their officers, agents,
5 servants, employees, and attorneys, and upon those
6 persons in active concert or participation with them
7 who receive actual notice of the order by personal
8 service or otherwise.

9 Additionally, case law supports the notion that nonparties may be found
10 in contempt of an injunction provided they have actual notice of the
11 injunction and aid or abet in its violation. *See McGraw-Edison Co. v.*
12 *Preformed Line Products Co.*, 362 F.2d 339, 344 (9th Cir. 1966) (citations
13 omitted). It is clear that for Ms. Brown to be subject to the court's
14 contempt powers, there must be at the very least a strong identity of
15 interests between the enjoined defendant Amphion and the would-be
16 contemnor. Applied to this case, that means there must exist a
17 commonality of incentives and motivations between Amphion and Ms. Brown.
18 Although Ms. Brown would like the court to view her interests as
19 independent and that her rights have not been adjudged according to law,
20 in an effort to free her from the bounds of the Permanent Injunction, the
21 court cannot do so.

22 Taking a look at the language of the Permanent injunction, while it
23 is not clear whether Ms. Brown is an agent, she falls within the "all
24 other persons . . . claiming to act in Defendants' behalf, or in concert
25 or participation with Defendants, and any other individual or entity duly
26 served with a copy of this order, are hereby restrained and enjoined from
interfering with the plaintiff's security interest." Ct. Rec. 36,
Permanent Inj., at 3, ¶2. Ms. Brown's argument that as a possible
shareholder the Permanent injunction does not apply to her does not square

1 with the case law. Court's orders apply equally to a company's
2 shareholders because they are in privity with the company party. See
3 *United States v. Geophysical Corp. of Alaska*, 732 F.2d 693, 697 (9th
4 Cir.1984) ("A person technically not a party to the prior action may be
5 bound by the prior decision if his interests are so similar to a party's
6 that that party was his 'virtual representative' in the prior action.")
7 (quoting *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1003 (9th
8 Cir.1980)).

9 The court finds Ms. Brown's argument that the Permanent Injunction
10 is too ambiguous to apply to her disingenuous also. There is no question
11 that Ms. Brown was in privity with Amphion as a shareholder based on her
12 e-mails and the declarations of Dr. Condon. There is no doubt that the
13 language in the Permanent Injunction would put anyone served with a copy
14 of the same on notice that he or she may be limited in taking certain
15 actions. Paragraph 2 of the injunction alerts potential contemnors that
16 they should not take any action to interfere with Red 1's security
17 interest in the Collateral which is unambiguously defined.

18 Ms. Brown does not deny that she has Collateral as she declares that
19 she is seeking a declaratory judgment in the Superior Court of Chatham
20 County, Georgia on June 8, 2007 to determine whether her interest in the
21 equipment at issue is superior to the interest claimed by Red 1. The
22 court finds that her actions before filing her state court suit would
23 support the "active concert or participation" rationale for establishment
24 of personal jurisdiction.

25 Having established personal jurisdiction over Vickie Brown for
26 purposes of this contempt proceeding, the court must determine in its

1 final step of the analysis whether Ms. Brown has violated the Permanent
2 Injunction. Based on the evidence before the court, it concludes that Ms.
3 Brown has interfered with Red 1's security interest. Ms. Brown was
4 represented by an attorney and the facts indicate she clearly received
5 constructive knowledge as early as April 20, 2004 with the UCC-1 filing
6 in Georgia and that she had actual knowledge of the same as early as
7 September 4, 2006, before her alleged purchase. Ms Brown's actions can
8 not be viewed a wholly independent but rather inextricably connected with
9 Amphion, who was clearly subject to the injunction.

10 The court finds that Ms. Brown's motion to dismiss this case and her
11 request for attorney's fees must be denied. The district court's power
12 to issue a contempt order depends, at least in part, on its subject matter
13 jurisdiction over the underlying action. Clearly this court had subject
14 matter jurisdiction over the underlying action based on diversity. The
15 court also has personal jurisdiction over the alleged contemnor as
16 explained above. The court finds that Ms. Brown is in contempt of the
17 Permanent Injunction based on the clear evidence before the court.

18 **IT IS ORDERED** that:

19 1. Vickie Brown's Motion to Dismiss for Lack of Personal Jurisdiction
20 and for an Award of Attorneys' Fees, Ct. Rec. 49, filed September 28, 2007
21 is **DENIED**.

22 2. Vickie Brown is found to be in contempt of the Permanent
23 Injunction issued on February 28, 2007. Vickie Brown is hereby enjoined
24 from selling the Collateral. Vickie Brown shall be required to comply
25 with the Permanent Injunction and surrender the Collateral to Red 1
26 Investments.

3. Plaintiff's request for attorney's fees and costs incurred in investigating, policing, and enforcing the Permanent Injunction is DENIED without prejudice.

4. The District Court Executive is DIRECTED to file this Order, and provide copies to all counsel, including Vickie Browns's counsel.

IT IS SO ORDERED.

DATED this 9th day of November, 2007.

s/Lonny R. Suko

LONNY R. SUKO
United States District Judge